

April 2006

Questions & Answers -- Copyright Column

Laura N. Gasaway

University of North Carolina-Chapel Hill School of Law, laura_gasaway@unc.edu

Follow this and additional works at: <https://docs.lib.purdue.edu/atg>



Part of the [Library and Information Science Commons](#)

Recommended Citation

Gasaway, Laura N. (2006) "Questions & Answers -- Copyright Column," *Against the Grain*: Vol. 18: Iss. 2, Article 27.

DOI: <https://doi.org/10.7771/2380-176X.4656>

This document has been made available through Purdue e-Pubs, a service of the Purdue University Libraries. Please contact epubs@purdue.edu for additional information.

Cases of Note from page 63

founding an appreciable number of reasonably prudent purchasers exercising ordinary care." *Int'l Ass'n of Machinists & Aerospace Workers, AFL-CIO v. Winship Green Nursing Ctr.*, 103 F.3d 196, 201 (1st Cir. 1996).

An ordinary confusion claim would have an infringer diverting customers and free-riding on claimant's goodwill. **Attrezzi, LLC**, however, claimed "reverse confusion." Purchasers might view **Maytag** as the source of **Attrezzi LLC's** goods. See *DeCosta v. Viacom Int'l, Inc.*, 981 F.2d 602, 608 (1st Cir. 1992).

In reverse confusion, the infringer could be selling an inferior product or it could "saturate the market and 'overwhelm the senior user.'" The senior user loses its product identity, control over its reputation and ability to move into new markets. 3 McCarthy, supra, § 23:10, at 23-36 (quoting *Ameritech, Inc. v. Am. Info. Techs. Corp.*, 811 F.2d 960, 964 (6th Cir. 1987)). Internal memos at **Maytag** acknowledged problems with its products, and whatever the degree of severity, this risked tarring **Attrezzi LLC** with the same brush.

Let's Compare and Contrast.

Winship Green, 103 F.3d at 201 holds the series of factors to be considered.

Both companies use the identical word **Attrezzi**. **Maytag** hooks it onto **Jenn-Air**

which might diminish confusion, but in a reverse confusion case the more recognized **Jenn-Air** mark makes things worse to **Attrezzi LLC**. *A & H Sportswear v. Victoria's Secret Stores, Inc.* 237 F.3d 198, 230 (3d Cir. 2000).

Edge Attrezzi LLC.

True, **Jenn-Air** is appliances, but **Attrezzi LLC** has appliances along with gourmet foods and dinnerware. The products are not radically dissimilar. And **Maytag** had announced the possibility of extending its line to include bar ware, cups, glasses and cutlery. 3 McCarthy, supra, § 23:20.1, at 23-73 to 23-74 & nn. 1-2 (collecting cases).

Edge Attrezzi LLC.

What about channels of trade, advertising modes and prospective customers? **Maytag** is a big deal selling nationally through stores and catalogues while **Attrezzi LLC** is one store patronized by Portsmouth locals. But both have Websites and those search engines turn up both. And both are selling up-market products.

Edge Attrezzi LLC.

Attrezzi LLC had eight emails griping about the quality of **Jenn-Air Attrezzi** products. And there were phone calls for **Jenn-Air** coming into the **LLC** shop. A declaration from an **LLC** customer read:

"I thought that **Maytag** operated **Attrezzi** as one of a chain of retail shops. Part of the reason for this belief is the dis-

tinguiveness of the **Attrezzi** name. I figured that because both companies were using the same name in the kitchen products market, they must be related."


Whups. Well that sure seems to go to Attrezzi LLC.

As to the willfulness of it all, **Maytag** could not be found to be operating in utter good faith. The jury found **Maytag** was well aware of the clash of names and just bulld ahead.

And finally, **Attrezzi LLC** had actually achieved regional success with features in the *Boston Globe*, *Accent Magazine* and an award from *Business NH* magazine for its **Attrezzi** branding campaign. **Maytag** had dropped a bundle on advertising. And in a reverse confusion case, the well known giant **Maytag** is hurt rather than helped by its greater renown.

Another round to Attrezzi LLC.

With the final tally in, the First Circuit found that while they might have arrived at a different result as fact finders, there was no basis for finding the jury's verdict to be irrational. **Maytag** would just have to get busy and find another Italian word for their products.

And the Attrezzi Website is up and running without a Maytag appliance in sight. Classes in Tuscan cooking. Scharffen Berger chocolates for \$6 per 3 oz. bar and Carpe Diem locally roasted coffee at \$11/lb. 

Questions & Answers — Copyright Column

Column Editor: **Laura N. Gasaway** (Director of the Law Library & Professor of Law, Law Library, CB #3385, University of North Carolina, Chapel Hill, NC 27599; Phone: 919-962-2295; Fax: 919-962-1193) <laura_gasaway@unc.edu> www.unc.edu/~unclng/gasaway.htm

QUESTION: *A photographer has donated his negatives to the library. Does the library now own the copyright in the photographs?*

ANSWER: No, the library owns the physical objects, the negatives. The copyright is separate from any physical object in which the work may be stored such as a print or a negative. The library may even own the only existing copy of a photograph, but it does not own the copyright unless the copyright owner (in this case, the photographer) specifically transfers the copyright in writing.

QUESTION: *An employee in a non-profit organization sends out email updates to the staff that consist of items taken from news stories/articles on the Web (from Reuters, Associated Press and various newspapers), news stories posted on other listservs, emails from colleagues, etc. Because this is disseminated as an internal list the employee thought it was okay just to reproduce the news stories in these emails. Now,*

"he wishes to" disseminate the updates to a much wider audience outside the organization. What are the copyright infringement concerns with circulating these internal emails containing the full text of articles?

ANSWER: If any of these sources are licensed products, the license agreement controls the redistribution of this content by an employee. If the organization has a CCC annual photocopy license, then redistribution within the organization is permitted. If the organization is not a CCC licensee, and redistribution of full text is done more than very occasionally, permission is required, and often there is a fee, even for a nonprofit organization. He could, however, prepare a brief description of the contents and distribute it along with a link to where the item is found on the Web. In the alternative, he could use the headline and distribute that since headlines are not copyrightable in the United States, in contrast with many European countries. Distribution outside the organization

other than headlines and links is even more likely to be infringement.

QUESTION: *A patron requested an interlibrary loan of a 124-page article published in a freely available e-journal on the Web. The patron could not download or read the article in the 30 minutes time limit that the library imposes on patrons using library computers. The library printed the first 20 pages for free and the patron paid for copying the remaining pages. Did the library violate the copyright law?*

ANSWER: No, it did not. In fact, the library could have printed the entire 124 pages for the patron had it chosen to do so. Under section 108(d), libraries are permitted to re-

continued on page 65



Questions & Answers from page 64

produce a single copy of an article from a periodical issue for a patron. If that article is available on the Web with no license agreement, then printing or downloading that article for the patron is the same as from a printed journal, and is no problem. Whether the library charges the patron for printing is up to the individual library and has nothing to do with copyright.

QUESTION: *A professor of Communication Studies has written an article that analyzes, critiques and comments upon advertising appearing in a popular computer magazine. The article quotes from several of the ads, and the professor wants to reprint six of the advertisements in the article. Would this qualify as a fair use? If not, from whom should she seek permission?*


ANSWER: Quoting from the advertisements, with proper attribution, is likely to be a fair use. The purpose of using the quotations is to produce a critique of them; the amount used is small; and there is likely to be no market effect. To reproduce some of the ads in their entirety, one does need permission since each advertisement is an entire copyrighted work. It would be like including a copyrighted photograph in the article; because each photo is a separate copyrighted work, reprinting one in the article requires permission.

The easy answer about from whom to seek permission is, from the copyright owner, which is not always easy to determine. Start with the magazine and ask permission to reprint the ad. It probably will refer her to the advertising agency that produced the ad, and the agency will know whether it or the company that hired the agency owns the copyright in the advertisement.

QUESTION: *The library is sponsoring a book talk by a famous author. May it post a photograph of the author and a photocopy of his work on the library's Website? The book jacket from his latest book?*

ANSWER: Only with permission. The library should contact the author or the author's agent about the photograph. Sometimes the agent will supply the latest photograph and perhaps even in digital form, and there is seldom a charge for use of the publicity photo. The publisher should be contacted about photocopying the work and about scanning the book jacket. The publisher can answer directly about the photocopy of the work but may not actually own the art work on the jacket. Often publishers contract with an artist to use their work on the jacket but the copyright remains with the artist. The publisher will know this, however, and can either further license the library (depending on its license from the artist) or put the library in contact with the artist.

QUESTION: *The school has an old filmstrip that it wants to convert to DVD. May it do so?*

ANSWER: Under section 108(c), the library must first try to buy the filmstrip on DVD. If it does not exist, then because the format is obsolete, the library may copy it into the new format. The statute states that "... a format shall be considered obsolete if the machine or device necessary to render perceptible a work stored in that format is no longer manufactured or is no longer reasonably available in the commercial marketplace." Moreover, a library does not have to acquire used equipment, only new. Filmstrip projectors likely qualify as obsolete today. 

Books Are Us

Column Editor: **Anne K. Robichaux** (Professor Emerita, Medical University of South Carolina)
<awkr7721@sc-online.net>

Column Editor's Note: *This column covers fictitious accounts of people in our industry — librarians, publishers, vendors, booksellers, etc. — people like us. All contributions, comments, suggestions are welcomed. — AR*



Thanks to **Ramune Kibilius** (Collection Development/Special Projects Librarian, Galter Health Sciences Library, Northwestern University) for letting me know about **Alice Hoffman's** sixteenth novel, *The Ice Queen* (NY: Little, Brown and Co., 2005, ISBN 0-316-05859-9). The narrator is a nameless librarian, and the tale is "a magical story of passion, loss and renewal."

The story begins with the then eight-year-old narrator cautioning the reader to "Be careful what you wish for." Her wishes appear to come true with often dire circumstances. Because of this, she becomes introverted, quiet, and tries not to draw attention to herself. She also learns to listen and as she grew older became a confidante to others, offering advice when asked. Even though she was the quiet girl, she always had definite opinions. After high school graduation, she looked for a career where silence would be an asset. Of course she picked library science and pursued a master's degree. Described as serious, she became a reference librarian, a natural progression from being the one who listened and gave advice to the one who was turned to for information.

The librarian was well liked, reliable, and the employee who collected money for presents and functions for the staff. After fifteen years she left the library in New Jersey to go to another out of state. Her "colleagues wanted to give her a going away party at the library, but without her there was no one to organize it."

In the first library, she "doled out assistance, silence, and comfort." But she also had a dark side, becoming fascinated by death and an expert on the many ways one could die. As a result, the local police chief turned to her for death related information. Her tools for researching death included medical texts, the *Merck Manual of Pharmaceuticals*, and her favorite: *A Hundred Ways to Die*, a guide to suicide.

One story in the novel describes her as caretaker for her dying grandmother. She wants to keep her alive, and litters the house with books, thinking if there were always books to read, her grandmother would have to stay alive to read them. (This description struck a chord: I always seem to be mailing off books to my 90 plus mother and mother-in-law!)

She continued to withdraw within herself, becoming reclusive and frozen emotionally, incasing herself in ice, so to speak. Thus the title of the novel: *The Ice Queen*.

Her brother has convinced her to move near him, to a job at a public library in Florida. This library is described as unbelievably small, with only one other librarian, who is described as tidy and well-organized, who has worked there for forty years. Her failing eyesight has prompted her to hire another librarian "to be her eyes."

The phone rarely rings, patrons rarely have a need for reference services, and the narrator has little to do and can't imagine why she was really needed.

The library is seriously under-funded, most of the shelves are empty, no computers are available to patrons, and an old-fashioned card catalog is still in use. The only weekly activity is a pre-school reading group. There are very few patrons and very few calls for reference. When the occasional patron comes in to check out books, we learn there are innumerable boxes of card files kept by patron name, itemizing the items checked out over time.

Other great librarian descriptors in the novel:

"I was a librarian after all; I'd want to know how the story ended."

"I'm just a librarian...."

continued on page 66